IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE, TEACH ONE OF AMERICA, INC.,	)	
Plaintiffs,	)	**Case Number: 3:06-CV-224-WKW**
v.	)	
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT WARREN'S MOTION TO COMPEL

Comes now the Plaintiffs on the above entitled action and hereby offer the following response to Defendant Warren's Motion to Compel Production.

COURSE OF DISCOVERY

As Defendant Warren correctly notes, the Plaintiffs produced their responses to the Defendant's 38 requests for production of documents. Shortly afterwards, Plaintiffs' counsel engaged in a lengthy telephone conversation whereby it was explained that although specific objections were made to several requests for preservation of the court record, many of the documents requested by the Defendant were simply not in the possession of the Plaintiffs. Defendant Warren now repeatedly moves the Court to compel production of documents that the Plaintiffs have specifically explained to Defense counsel that they do not possess. This is preposterous, as the Plaintiffs cannot produce documents that they do not have. Regardless, the Plaintiffs will address the Defendant's arguments individually.

Request No. 2

The Plaintiffs simply preserved objections to this request by stating that it was broad, vague, burdensome, immaterial, and irrelevant Despite maintaining these objections for the record, the Plaintiffs agreed to produce all documents in their possession responsive to the request, and did just that. Accordingly, the Plaintiffs will not burden the Court with a moot argument over the asserted objections, as the Plaintiffs agreed to produce any documents they had that were responsive to the request. Furthermore, counsel for the Plaintiffs and counsel for the Defendants had a telephone conversation wherein the Plaintiffs' response to this specific request and the documents within the possession of the Plaintiffs was specifically discussed. Again, the Plaintiffs can only produce documents that they have in their possession.

Requests Nos. 3, 4, and 5

The Plaintiffs refused to produce bills and records of payments to law firms in these requests on the basis of attorney client privilege and work product. It is the position of the Plaintiffs that the disclosure of documents such as these, especially prior to the trial of this matter, would be substantially prejudicial as it would reveal confidential information regarding legal advice. *See Chaudry v. Gallizero*, 174 F.3d 394, 403 (4th Cir. 1999). Furthermore, the Plaintiffs have produced a privilege log detailing all documents which have been withheld. The Plaintiffs maintain their position that all of these documents are privileged and due to be withheld.

Request No. 6

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 2 as if fully set out herein.

Request No. 7

Here, the Defendant seeks **all** cell phone records of Frank Thomas since the year 2003. These records would contain an untold amount of information regarding telephone conversations that are wholly unrelated to this lawsuit. The Defendant does not even attempt to narrowly tailor this request so that it would be targeted towards relevant information. In short, this is nothing more than a fishing expedition on the part of the Defendant, and the motion is due to be denied.

Request No. 8

The Defendant seeks copies of checks that Frank Thomas gave to two political action committees. This is immaterial and wholly irrelevant. Frank Thomas is free to give donations to any political action committees of his choosing, and the Defendant's assertion that this constitutes evidence of Frank Thomas's knowledge that "MCII was not entitled to obtain" a bingo license is conclusory and wholly unsupported. Furthermore, as the Defendants note, Frank Thomas admitted giving the contributions in his deposition. Accordingly, the cancelled checks would not be probative of anything, and would merely be cumulative. Therefore, the Plaintiffs should not be burdened with producing immaterial and cumulative evidence.

Request No. 11

The Plaintiffs simply preserved objections to this request by stating that it was broad, vague, burdensome, immaterial, and irrelevant Despite maintaining these objections for the record, the Plaintiffs specifically stated that they did not have any such documents in their possession responsive to the request. Accordingly, the Plaintiffs will not burden the Court with a moot argument over the asserted objections, as the Plaintiffs do not have any such documents to produce regardless of the objcetions Furthermore, counsel for the Plaintiffs and counsel for the

Defendants had a telephone conversation wherein the Plaintiffs' response to this specific request and the documents within the possession of the Plaintiffs was specifically discussed. Again, the Plaintiffs can only produce documents that they have in their possession.

Request No. 13

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 17

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 2 as if fully set out herein.

Request No. 18

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 19

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 20

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 21

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 22

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 23

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 25

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 2 as if fully set out herein.

Request No. 26

The Defendant seeks production of checks that Frank Thomas has made to Macon County charities in the last five years. Frank Thomas is free to make contributions to whatever charities he chooses, just as Milton McGregor is. The Defendant makes the unfounded and conclusory allegation that any donation made to a charity would be evidence of Frank Thomas "securing a front" to operate a Class B bingo facility for MCII, but that is wholly unsupported and simply ridiculous. By that rationale, Defendant Warren must admit that the 60 non-profit organizations currently operating bingo facilities are simply "fronts" for Macon County Greyhound Park. The motion is due to be denied.

Request No. 27

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 2 as if fully set out herein.

Request No. 37

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Request No. 38

Again, the Defendant seeks to have the Court compel production of documents that the Plaintiffs do not have in their possession. The Plaintiff thereby adopt and incorporate their response to Request No. 11 as if fully set out herein.

Respectfully Submitted,

__/s/ Christopher K. Whitehead_____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record via this Court's electronic filing system on this the 1st day of June, 2007.

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